

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAM TOCCO,

Plaintiff,

CIVIL ACTION NO. 05-CV-70013-DT

VS.

DISTRICT JUDGE PAUL D. BORMAN

SAM ANTHONY TOCCO, AND

MAGISTRATE JUDGE MONA K.
MAJZOUN

KNOLLWOOD MEMORIAL PARK
CEMETERY ASSOCIATION,

Defendants. /

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO
STRIKE CERTAIN WITNESSES PURSUANT TO FEDERAL RULE OF CIVIL
PROCEDURE 37**

Before this Court is Defendants' Sam Anthony Tocco and Knollwood Memorial Park Cemetery Association's Motion to Strike Certain Witnesses Pursuant to Fed. R. Civ. P. 37, filed on July 22, 2005. Plaintiff filed his response on August 15, 2005. Pursuant to 28 U.S.C. Sec 636 (B)(1)(A) the Honorable Paul D. Borman referred this matter to the undersigned for determination on October 12, 2005. This Court now exercises its authority under Local Rule 7.1(e) and proceeds to determination of this matter on the briefs and without oral hearing.

Defendants claim that Plaintiff filed his Amended Witness List on June 17, 2005. (Def.s' Mot. at Ex. A ("Witness List")). In contention are the names of four witnesses specifically listed as follows: " Dr. Leonard Menwen, internist; Dr. Russell Miller; Dr. Haynes; and Jay Miller & Associates". (Witness List at Nos. 36, 38, 39, 41). It is Defendants' contention that the information given neither conforms with Federal Rule of Civil Procedure 37 nor is it sufficiently adequate to allow Defendants to issue subpoenas for documents pursuant to Federal Rule of

Civil Procedure 26 as is their right. The Court agrees.

Federal Rule of Civil Procedure 26(a) states in pertinent part that a party must supply:

the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subject of the information.

The ends of justice are more expeditiously met when the open and honest exchange of information is accelerated between litigating parties. In this case, Defendants have the right to know the proper spelling and complete names of Plaintiff's witnesses, as well as the addresses and telephone numbers of said witnesses if known to Plaintiff.

WHEREFORE IT IS ORDERED that Plaintiff will provide to Defendants the complete names, addresses and telephone numbers of witnesses Menwen, Dr. Russell Miller, Dr. Haynes and Jay Miller & Associates no later than March 9, 2006.

Defendants further move for sanctions under Federal Rule of Civil Procedure 37, arguing that Plaintiff was without substantial justification in failing to disclose all of the pertinent information regarding his witnesses. Defendants seek reasonable expenses, including attorney fees, citing Federal Rule of Civil Procedure 37(c)(1). This Court finds that Plaintiff's failure to provide all of the necessary information to Defendants on Plaintiff's Witness List dated June 17, 2005 is harmless. Plaintiff filed his Third Amended Complaint on October 20, 2005 pursuant to this Court's Order dated October 6, 2005. Additional parties were added, and new counsel appeared in the litigation. Following a Court Ordered Status Conference on January 19, 2006, this Court issued a Second Amended Scheduling Order and specifically extended the date for the filing of witness lists by all parties to March 9, 2006. Defendants have suffered no harm under these facts and for that reason Plaintiff's Motion for attorney fees and costs as requested under Federal Rule of Civil Procedure 37 is DENIED.

IT IS SO ORDERED.

Dated: January 24, 2006

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

Proof of Service

I hereby certify that a copy of this Order was served upon Counsel of Record on this date.

Dated: January 24, 2006

s/ Lisa C. Bartlett
Courtroom Deputy